

Rural Housing Service, USDA

§ 3575.25

(1) To construct or relocate public buildings, roads, bridges, fences, or utilities and to make other public improvements necessary to the successful operation or protection of facilities authorized by paragraph (a) of this section.

(2) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary to the successful operation or protection of facilities authorized in paragraph (a) of this section.

(3) To pay the following expenses (but only when such expenses are a necessary part of a loan to finance facilities authorized in paragraph (a) of this section):

(i) Reasonable fees and costs such as origination fee, loan guarantee fee, legal, engineering, architectural, fiscal advisory, recording, environmental impact analyses, archaeological surveys, possible salvage or other mitigation measures, planning and establishing or acquiring rights.

(ii) Interest on loans until the facility is self-supporting, but not for more than 2 years unless a longer period is approved by the Agency; interest on loans secured by general obligation bonds until tax revenues are available for payment, but not for more than 2 years unless a longer period is approved by the Agency's National Office; and interest on interim financing.

(iii) Costs of acquiring interest in land; rights such as water rights, leases, permits, rights-of-way, and other evidence of land or water control necessary for development of the facility.

(iv) Purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities.

(v) Initial operating expenses for a period ordinarily not exceeding 1 year when the borrower is unable to pay such expenses.

(vi) Refinancing debts incurred by, or on behalf of, a community when all of the following conditions exist:

(A) The debts being refinanced are less than 50 percent of the total loan,

(B) The debts were incurred for the facility or service being financed or any part thereof (such as interim financing, construction expenses, etc.), and

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan.

(4) To pay obligations for construction incurred prior to filing a preapplication and application with the Agency. Construction work must not be started (and obligations for such work or materials must not be incurred) before the Conditional Commitment for Guarantee is issued. If there are compelling reasons for proceeding with construction before the Conditional Commitment for Guarantee is issued, lenders may request Agency approval to pay such obligations and not jeopardize a guarantee from the Agency. Such request must comply with the following:

(i) Provide conclusive evidence that the contract was entered into without intent to circumvent the Agency regulations. However, the Agency is not required or obligated to pay a loss unless a written guarantee is issued,

(ii) Modify the outstanding contract to conform with the provisions of this subpart. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When construction is complete and it is impracticable to modify the contract, the borrower and lender must provide the certification required by paragraph (b)(4)(iii) of this section,

(iii) Provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications, and

(iv) The borrower and the contractor must have complied with all statutory and executive order requirements related to Agency financing for construction already performed even though the requirements may not have been included in the contract documents.

§ 3575.25 Ineligible loan purposes.

Loan funds may not be used to finance:

(a) Properties to be used for commercial rental when the borrower has no

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control over tenants and services offered except for industrial-site infrastructure development,

(b) Facilities primarily for the purpose of housing Federal or State agencies,

(c) Community antenna television services or facilities,

(d) Telephone systems,

(e) Facilities which are not modest in size, design, and cost,

(f) Finder's and packager's fees,

(g) Projects located within the Coastal Barriers Resource System that do not qualify for an exception as defined in section 6 of the Coastal Barriers Resource Act, 16 U.S.C. 3501 *et seq.* (available in any Agency office),

(h) New combined sanitary and storm water sewer facilities, or

(i) Projects that are located in a special flood or mudslide hazard area as designated by the Federal Emergency Management Agency in a community that is not participating in the National Flood Insurance Program.

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§ 3575.27 Eligible lenders.

(a) *Eligible lenders.* Eligible lenders (as defined in this section) may participate in the loan guarantee program. These lenders must be subject to credit examination and supervision by an appropriate agency of the United States or a State that supervises and regulates credit institutions. A lender must have the capability to adequately service loans for which a guarantee is requested. Eligible lenders are:

(1) Any Federal or State chartered bank or savings and loan association;

(2) Any mortgage company that is a part of a bank holding company;

(3) Bank for Cooperatives, National Rural Utilities Cooperative Finance Corporation, Farm Credit Bank of the Federal Land Bank, or other Farm Credit System institution with direct lending authority authorized to make loans of the type guaranteed by this subpart;

(4) An insurance company regulated by a State or National insurance regulatory agency;

(5) State Bond Banks or State Bond Pools; and

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(6) Other lenders that possess the legal powers necessary and incidental to making and servicing guaranteed loans involving community development-type projects. These lenders must also be subject to credit examination and supervision by either an appropriate agency of the United States or a State that supervises and regulates credit institutions and provide documentation acceptable to the Agency that they have the ability to service the loan. Lenders under this category must be approved by the National Office prior to the issuance of the loan guarantee.

(b) *Conflict of interest.* When the lender's officers, stockholders, directors, or partners (including their immediate families) or the borrower, its officers, stockholders, directors, or partners (including their immediate families) own, or have management responsibilities in each other, the lender must disclose such business or ownership relationships. The Agency will determine if such relationships are likely to result in a conflict of interest. This does not preclude lender officials from being on the borrower's board of directors.

§ 3575.28 Transfer of lenders or borrowers (prior to issuance of Loan Note Guarantee).

(a) Prior to issuance of the loan guarantee, the Agency may approve the transfer of an outstanding Conditional Commitment for Guarantee from the present lender to a new eligible lender, provided:

(1) The former lender states in writing why it does not wish to continue to be the lender for this project;

(2) No substantive changes in ownership or control of the borrower has occurred;

(3) No substantive changes in the borrower's written plan, scope of work, or changes in the purpose or intent of the project has occurred; and

(4) No substantive changes in the loan agreement or Conditional Commitment for Guarantee are required.

(b) The substitute lender must execute a new application for loan and guarantee (available in any Agency office).

(c) If approved, the Agency will issue a letter of amendment to the original